

REMARKS

This amendment is responsive to the non-final Office Action mailed September 22, 2004. Claims 112-131 were pending and under consideration in the instant application. In this amendment, Claims 112, 115, and 116 are amended. Thus, following entry of the present amendment, Claims 112-131 remain pending and under consideration.

Applicants kindly thank the PTO for withdrawing the previous rejections under 35 U.S.C. § 112, first paragraph, in the Office Action mailed September 22, 2004.

I. The Amendment to the Claims

The present amendment amends Claims 112, 115, and 116. The amendments to Claims 112, 115, and 116 are fully supported by the specification and claims of the application as originally filed.

In particular, support for the amendments to Claim 112, 115, and 116 can be found, for example, in Claims 1, 55, and 57 as originally filed, in Claims 112, 115, and 116 as previously pending, and in the specification at page 30, line 30, to page 31, line 1, at page 36, lines 28-33, at page 40, line 10, to page 45, line 4, at page 66, lines 7-18, and at page 68, line 31 to page 69, line 10-20.

The above-referenced paragraphs of the specification, particularly the paragraphs at page 40, line 10, to page 45, line 4, make clear that the replication-incompetent nucleic acids used in the claimed methods can drive nucleic acid replication and/or transcription from the replication-incompetent HCV nucleic acid, but, however, the replication-incompetent nucleic acids recited in the claimed method cannot make a fully infectious HCV that can infect further cells.

In view of the foregoing, Applicants respectfully submit that the amendments to Claims 112, 115, and 116 are fully supported by the specification and claims of the application as originally filed. Accordingly, no new matter is introduced by the instant amendment. Therefore, Applicants hereby respectfully request entry of the present amendment under 37 C.F.R. § 1.111.

II. The Rejection of Claims 112-131 under 35 U.S.C. § 112, second paragraph

Claims 112-131 stand rejected under 35 U.S.C. § 112, second paragraph, as allegedly indefinite. In response, Applicants respectfully submit that one skilled in the art can understand the scope of amended claims 112-131, and thus that such claims are not indefinite under 35 U.S.C. § 112, second paragraph.

A. The Legal Standard

Under 35 U.S.C. § 112, second paragraph, a claim must particularly point out and distinctly claim the subject matter which the applicant regards as his invention. *See* 35 U.S.C. § 112, second paragraph. This statutory mandate is met when “one skilled in the art would understand the bounds of the claim when read in light of the specification.” *See Solomon v. Kimberly-Clark Corporation*, 216 F.3d 1372, 1378, 55 USPQ2d 1279, 1282 (Fed. Cir., 2000), quoting *Personalized Media Communications, LLC v. International Trade Commission et al.*, 161 F.3d 696, 705, 48 USPQ2d 1880, 1888 (Fed. Cir., 1998). “If the claims read in light of the specification reasonably apprise those skilled in the art of the scope of the invention, § 112 demands no more.” *See Personalized Media*, 161 F.3d at 705, 48 USPQ2d at 1888, quoting *Miles Lab., Inc. v. Shandon, Inc.* 997 F.2d 870, 238 USPQ2d 1123 (Fed. Cir., 1993).

B. A Skilled Artisan Can Understand the Scope of Claims 112-131

First, the PTO contends that claims 112-131 are unclear over the recitation of a “sample of host cells,” in that it is allegedly unclear what the host cells are a sample of. Without agreeing to the propriety of the rejection, Applicants respectfully submit that the rejection of the claims as indefinite on this basis is moot in view of the amendments to the claims. In particular, Applicants have amended the claims to recite simply “host cells,” thereby deleting the offending language. Applicants note that this amendment is not a narrowing amendment and merely clarifies that which Applicants have always regarded as their invention.

Second, the PTO contends that it is unclear whether the claimed methods involve a plurality of host cells, where each host cell comprises a plurality of test vectors, *e.g.*, the same plurality of test vectors is in each of the host cells or involve a plurality of host cells, some of the host cells have been transfected with different test vectors. In fact, Applicants contemplate that the claimed methods encompass each of these embodiments.

In the methods, the host cells as a group comprise a plurality of test vectors. One of skill in the art will recognize from the specification and figures of the present application that the methods work whether each host cell comprises the same plurality of test vectors or whether different host cells comprise different members of the plurality of test vectors. In either case, by monitoring expression of the indicator genes in the host cells, the resistance or susceptibility of the HCV population can be determined. Further, Applicants respectfully submit that the PTO’s recognition of these alternate embodiments of the claimed methods

demonstrates that one skilled in the art can recognize the scope of the claims, since the PTO recognized that the claims encompass both such embodiments. Accordingly, Applicants respectfully submit that claims 122-131 are not indefinite on this basis.

Third, the PTO contends that claims 112-114 and 117-121 are indefinite over the recitation of a “corresponding sample of host cells” transfected with a “corresponding plurality of test vectors.” Applicants kindly thank the PTO for the helpful suggestion of claim language, and respectfully submit that the rejection is moot in view of the amendment to the claims, though Applicants must disagree with the propriety of the rejection for the record. As above, Applicants note that this amendment is not a narrowing amendment, and merely clarifies that which Applicants have always regarded as their invention.

Finally, the PTO contends that claims 116 and 127-131 are indefinite in that it is not clear how the steps of the method determine anti-viral drug resistance as recited in the preamble to the claims. Without agreeing to the propriety of the rejection, Applicants believe that the rejection is moot in view of the amendments to the claims. In particular, the claims now recite that the activity of the indicator genes reflects the susceptibility of the HCV population to the anti-HCV drug, and therefore, determining the activity of the indicator genes allows the determination of the susceptibility of the HCV population to the anti-HCV drug. By determining such susceptibility at two different times, as recited by, *e.g.*, claim 116, resistance of the HCV population to the anti-HCV drug can be determined. Accordingly, Applicants respectfully submit that one skilled in the art can understand the scope of claims 166 and 127-131, and therefore, such claims are not indefinite.

In view of the foregoing, Applicants respectfully submit that the rejection of claims 112-131 as indefinite is either erroneous or moot in view of the amendments to the claims. Accordingly, Applicants respectfully request that the rejection of such claims under 35 U.S.C. § 112, second paragraph, be withdrawn.

III. The Rejection of Claims 112-131 under 35 U.S.C. § 103(a)

Each of claims 112-114, 116-121, and 127-131 stands rejected under 35 U.S.C. § 103(a) as allegedly obvious over U.S. Patent No. 6,127,116, issued to Rice *et al* (“Rice”). Further, claims 115 and 122-126 stand rejected as obvious over Rice in view of U.S. Patent No. 5,576,177, to Fridland *et al.* (“Fridland”) and Reissue Patent No. RE29,955, to Bornstein *et al.* (“Bornstein”). Without acquiescing to the propriety of the rejections, Applicants respectfully submit that the rejections are moot in view of the amendments to the claims. Further, Applicants respectfully submit that amended claims 112-131 are not obvious

over either *Rice* alone or *Rice* in view of *Fridland* and *Bornstein*, since the PTO cannot establish *prima facie* obviousness of claims 112-131 over such references, whether alone or in combination.

A. The Legal Standard for Obviousness

To reject a claim as under 35 U.S.C. § 103(a), the PTO bears the initial burden of showing an invention to be *prima facie* obvious over the prior art. *See In re Bell*, 26 U.S.P.Q.2d 1529 (Fed. Cir. 1992). If the PTO cannot establish a *prima facie* case of unpatentability, then without more the applicant is entitled to grant of the patent. *See In re Oetiker*, 24 U.S.P.Q.2d 1443 (Fed. Cir. 1992). The PTO must meet a three-part test to render a claimed invention *prima facie* obvious.

To begin with, the prior art references cited by the PTO must provide “motivation, suggestion, or teaching of the desirability of making the specific combination that was made by the applicant.” *See In re Kotzab*, 55 U.S.P.Q.2d 1316 (Fed. Cir. 2000). Where one reference is relied upon by the PTO, there must be a suggestion or motivation to modify the teachings of that reference. *See id.* Where an obviousness determination rests or relies on the combination of two or more references, there must be some suggestion or motivation to combine the references. *See WMS Gaming Inc. v. International Game Technology*, 51 U.S.P.Q.2d 1386 (Fed. Cir. 1999). The suggestion may be found in implicit or explicit teachings within the references themselves, from the ordinary knowledge of one skilled in the art, or from the nature of the problem to be solved. *See id.*

Second, the prior art references cited by the PTO must suggest to one of ordinary skill in the art that the invention would have a reasonable expectation of success. *See In re Dow Chemical*, 5 U.S.P.Q.2d 1529 (Fed. Cir. 1988). The expectation of success, like the motivation to combine two prior art references, must come from the prior art, not the applicant’s disclosure. *See id.*

Finally, the PTO must show that the prior art references, either alone or in combination, teach or suggest each and every limitation of the rejected claims. *See In re Gartside*, 53 U.S.P.Q.2d 1769 (Fed. Cir. 2000). If any one of these three factors is not met, the PTO has failed to establish a *prima facie* case of obviousness and the applicant is entitled to grant of a patent without making any affirmative showing of non-obviousness.

B. Claims 112-114, 116-121, and 127-131 are not Obvious Over Rice

Claims 112-114, 116-121, and 127-131 stand rejected as obvious over *Rice*. Without acquiescing to the propriety of the rejection, Applicants believe that the rejection of such

claims is moot in view of the present amendment to the claims. Further, Applicants respectfully submit that the PTO cannot establish *prima facie* obviousness of amended claims 112-114, 116-121, and 127-131, as *Rice* does not teach each and every element recited by the claims; *Rice* provides no motivation or suggestion to modify *Rice* to result in the claimed methods; and *Rice* provides no reasonable expectation of successfully practicing the claimed methods.

1. *Rice Does Not Teach Each and Every Element of Claims 112-114, 116-121 and 127-131*

First, *Rice* does not teach or suggest each and every element of the invention recited by claims 112-114, 116-121 and 127-131. In particular, nowhere does *Rice* teach or suggest use of a resistance test vectors that lack one or more HCV genes necessary for HCV replication in a method of determining whether an HCV population has decreased susceptibility to a compound.

Rice focuses on identifying the complete set of HCV nucleic acid sequences required to produce a fully infectious and replication competent HCV virus. In particular, *Rice* focuses on the 5' and 3' untranslated regions of the HCV genomic RNA that it teaches are essential for viral replication. See, e.g., *Rice* at Col. 9, lines 14-26. *Rice* teaches that HCV nucleic acids comprising the 5' and 3' untranslated sequences can be used to make "authentic HCV nucleic acids," defined to mean an HCV nucleic acid "that provides for full genomic replication and production of functional HCV proteins, or components thereof." See *Rice* at Col. 19, lines 37-40.

While *Rice* states that such authentic HCV nucleic acids can be used to make replication-defective HCV genomic RNA (see *Rice* at Col. 13, lines 11-14), nowhere does *Rice* teach any particular use for such replication-defective nucleic acids, and certainly does not teach their use in cell-based assays for determining resistance or susceptibility of HCV populations. Indeed, *Rice* repeatedly and insistently proclaims the advantages of having fully replication-competent HCV produced by the nucleic acids of *Rice*, and thus actually teaches away from use of the replication-incompetent HCV nucleic acids as recited by the presently claimed methods. See, for example, *Rice* at Col. 18, line 61 to Col. 19, line 26. As such, Applicants respectfully submit that *Rice* neither teaches nor suggests the subject matter of claims 112-114, 116-121 and 127-131.

2. *Rice Provides No Motivation or Suggestion to Modify its Teaching to Result in Claims 112-114, 116-121, and 127-131*

Further, *Rice* provides no motivation to an artisan of ordinary skill to modify its teaching to obtain the methods of amended claims 112-114, 116-121, and 127-131. *Rice* discloses no advantages of using vectors that yield replication-incompetent HCV viral populations, let alone any advantages of using such vectors in the methods of screening for compounds with anti-HCV activity described by *Rice*.

Rather, *Rice* focuses on replication-competent HCV replicons and their advantages, and contains absolutely no suggestion that vectors comprising deletions rendering HCV populations produced from the vectors replication-incompetent could or should be used in the methods disclosed by *Rice*. Therefore, one of ordinary skill, reading *Rice*, would have no motivation to modify the methods disclosed by *Rice* to obtain the methods recited by amended claims 112-114, 116-121 and 127-131. Accordingly, *Rice* cannot render obvious such claims.

3. *Rice Provides No Reasonable Expectation of Successfully Practicing the Methods of Claims 112-114, 116-121, and 127-131*

Finally, *Rice* does not provide a reasonable expectation to one of ordinary skill in the art to successfully practice the methods of claims 112-114, 116-121, and 127-131. *Rice* contains absolutely no guidance for selecting HCV nucleic acid sequences for deletion from a resistance test vector that would prevent the vector from being replication-competent, yet still permit its use in a method for determining the resistance or susceptibility of an HCV population to an anti-HCV compound.

Similarly, *Rice* provides no teaching to guide an ordinarily-skilled artisan in performing such an assay with such a replication-incompetent HCV nucleic acid. For example, *Rice* does not teach how to monitor activity of proteins encoded by such nucleic acids in such assays, or how such assays could be performed in the absence of fully replication-competent HCV. Absent such teaching, an artisan of ordinary skill could not reasonably expect to successfully practice the methods recited by claims 112-114, 116-121, and 127-131.

In view of the foregoing, Applicants respectfully submit that none of claims 112-114, 116-121, and 127-131 are obvious over *Rice*, since each of claims 112 and 116 are not obvious over *Rice* as shown above, and each of Claims 113, 114, 117-121, and 127-131 depend from one of these non-obvious claims. Accordingly, Applicants respectfully request withdrawal of the rejection of such claims under 35 U.S.C. § 103(a).

**C. Claims 115 and 122-126 Are Not Obvious
Over *Rice* in View of *Fridland* and *Bornstein***

Claims 115 and 122-126 stand rejected as obvious over *Rice* in view of *Fridland* and *Bornstein*. Applicants respectfully submit that none of *Rice*, *Fridland*, and *Bornstein*, either alone or in combination, renders claims 115 and 122-126 obvious as these references do not teach each and every element recited by the claims; do not provide motivation or suggestion to modify the references to result in the claimed methods; and do not provide reasonable expectation of successfully practicing the claimed methods. Accordingly, Applicants respectfully submit that the PTO cannot establish a *prima facie* case of obviousness of claims 115 and 112-126, and the rejection of these claims on that basis should be withdrawn.

As extensively discussed above, *Rice* does not teach or suggest any methods that use, *inter alia*, resistance test vectors that lack one or more HCV genes necessary for HCV replication. Neither *Fridland* nor *Bornstein*, either alone or in combination with each other or *Rice*, provide this missing element.

Fridland and *Bornstein* relate to use of standard curves in reverse transcriptase assays on plasma samples (*Fridland*) or in assays to detect proteins such as antibodies in plasma samples (*Bornstein*). As such, neither *Fridland* nor *Bornstein* in any way teaches or suggests that resistance test vectors that lack one or more HCV genes necessary for HCV replication could be used in the claimed methods, and thus do not teach the elements missing from *Rice*. Similarly, *Fridland* and *Bornstein* provide no motivation to modify the methods of *Rice* to achieve the claimed methods, as both *Fridland* and *Bornstein* describe totally unrelated assays. Likewise, *Fridland* and *Bornstein* do not provide a reasonable expectation of successfully practicing the claimed methods because, like *Rice*, they provide no guidance on selecting HCV nucleic acid sequences for deletion from a resistance test vector that would prevent the vector from being replication-competent, yet still permit its use in a method for determining the resistance or susceptibility of an HCV population to an anti-HCV compound.

In view of the foregoing, Applicants respectfully submit that the PTO cannot establish *prima facie* obviousness of claims 115 and 122-126 over *Rice* in view of *Fridland* and *Bornstein*, and therefore the rejection of such claims under 35 U.S.C. § 103(a) should be withdrawn.

**IV. The Rejection of Claims 112-131 under the Judicially-
Created Doctrine of Obviousness-Type Double Patenting**

Claims 112-131 stand rejected under the judicially-created doctrine of obviousness-type double patenting over Claims 1, 4, 7-11, 13, 14, 46-49, 51-53, 70-73, and 78-83 of U.S.

Patent No. 5,837,464 (“the ’464 patent”) in view of Lu *et al.* (“Lu”) and Wang *et al.* (“Wang”) and over Claims 1, 2, 18, 24-27, and 30-42 of U.S. Patent No. 6,242,187 (“the ’187 patent”) in view of Lu *et al.* and Wang *et al.* Applicants respectfully submit that the rejection of Claims 112-131 is in error because none of the rejected claims is an obvious variant of any claim of the ’464 patent or the ’187 patent.

A. The Legal Standard

Under the judicially-created doctrine of obviousness-type double patenting, a claim must be patentably distinct from a claim of an already issued patent or pending application. *See General Food Corp. v. Studiengesellschaft Kohle mbH*, 23 U.S.P.Q.2d 1839 (Fed. Cir. 1992). If the claim at issue defines more than an obvious variation of the patented or pending claim, it is patentably distinct and rejection of the claim under the doctrine of obviousness-type double patenting is improper. *See id.*

To establish a proper obviousness-type double patenting rejection, the Examiner must show that the claim at issue is a “mere variation” of the patented or pending claim that “would have been obvious to those of ordinary skill in the relevant art.” *See In re Kaplan*, 229 U.S.P.Q. 678, 683 (Fed. Cir., 1986). The fact that an issued claim may dominate a claim pending in application does not “by itself, give rise to double patenting.” *See id.* at 681. In addition, the *claims* of the issued patent, and not the patent’s specification, must themselves suggest the subject matter of the claims at issue. *See id.* at 681 and 683. Indeed, the specification of the issued patent may not be used to support an obviousness-type double-patenting rejection except as needed to interpret the claim terms. *See In re Vogel*, 164 U.S.P.Q. 619, 622 (C.C.P.A. 1970).

B. Claims 112-131 are not Obvious Variants of any Claim of the ’464 Patent or the ’187 Patent

As described above, Claims 112-131 are directed to methods for determining susceptibility of an HCV viral population infecting a patient to an anti-HCV drug. In contrast, the claims of the ’464 patent are directed to methods for determining susceptibility to anti-HIV drugs. No claim of the ’464 patent even remotely suggests that the methods claimed therein could or should be applied to either individual HCV isolates or to HCV viral populations. Similarly, the claims of the ’187 patent are directed to methods for determining the susceptibility to anti-HBV drugs. No claim of the ’187 patent suggests that these methods could be modified to methods suitable for determining the susceptibility of HCV populations to antiviral drugs.

While it is true that the claims of the '464 and '187 patents are not limited to patient-derived segments from any particular virus, the *claims* of such patents do not suggest that the methods should be applied to HCV patient-derived segments. The PTO contends that the specifications of the '464 and '187 patents teach that the claimed methods can be used in relation to various viral diseases, but the specifications of such patents are **not** prior art and cannot be used in such a manner under the correct legal standard, as discussed above. Rather, obviousness-type double patenting is determined in reference to the claims, and the specification is used only to interpret claim terms.

Nothing in the claims of the '464 and '187 patents suggest that patient-derived segments from HCV should be selected from the hundreds or thousands of patient-derived segments that could be obtained from viruses afflicting humans. The claims of the '464 and '187 patents do not mention HCV, do not suggest that anti-HIV drugs or anti-HBV drugs should be tested for anti-HCV activity, do not imply that the methods should be adapted to assess populations of HCV rather than individual HCV, and, in fact, do not mention HCV at all. As such, the **claims** of the '464 and '187 patents, the **only** portion of the '464 and '187 patents relevant to an obviousness-type double patenting analysis, in no way suggest the subject matter of the presently pending claims to an artisan of ordinary skill.

Moreover, neither *Lu* nor *Wang* can properly be combined with either the '464 patent or the '187 patent to show that Claims 112-131 are obvious variants of any claim of these patents. While the PTO contends that "*Lu* and *Wang* each demonstrate that those in the art would have looked to the teachings of [the '464 and '187 patents] to identify therapeutics against HCV," *Lu* and *Wang* cannot be used in this manner. Secondary references are only available in obviousness-type double patenting analysis to demonstrate that an artisan of ordinary skill would regard the claims as obvious variants of each other. *Lu* and *Wang* show no such thing. *Lu* and *Wang* provide no teaching or suggestion that a method for determining susceptibility to anti-HIV or anti-HCV drugs could or should be adapted to methods for determining susceptibility of an HCV viral population to antiviral drugs. Indeed, neither *Lu* nor *Wang* even remotely suggest that anti-HIV or anti-HBV drugs should be used to treat HCV, let alone that resistance of HCV populations to such drugs should be assessed. As such, *Lu* and *Wang* surely fail to teach or suggest that one of ordinary skill in the art would regard such methods for determining susceptibility of HCV viral populations to antiviral drugs as obvious variants of the methods claimed by the '464 patent or the '127 patent.

Finally, the PTO has repeatedly contended that the instant claims are obvious variants of the '464 and '187 patents' claims because such claims of the '464 patent and '187 patent are generic to the present claims. Applicants respectfully invite the PTO's attention to *In re Kaplan*, discussed above, and M.P.E.P. § 804 II, where the Federal Circuit and the PTO each make clear that dominance, by itself, cannot support an obviousness-type double patenting rejection. The correct analysis focuses on whether an ordinarily-skilled artisan would regard the claim at issue as an obvious variant of a pending claim. As explained above, such an artisan would not regard claims 112-131 as obvious variants of the claims of the '464 or '187 patents.

In view of the foregoing, Applicants respectfully submit that Claims 112-131 are not obvious variants of any claim of the '464 patent or the '187 patent. Accordingly, Applicants respectfully suggest that the rejection of Claims 112-131 under the judicially-created doctrine of obviousness-type double patenting is in error, and earnestly request its withdrawal.

V. The Provisional Rejection of Claims 112-115 and 117-126 under the Judicially-Created Doctrine of Obviousness-Type Double Patenting

Claims 112-115 and 117-126 stand provisionally rejected under the judicially-created doctrine of obviousness-type double patenting over claims 8, 9, 12, and 13 of co-pending Application No. 10/139,069 ("the '069 application"). Applicants respectfully submit that the rejection of claims 112-115 and 117-126 on this basis is erroneous, as none of the rejected claims are obvious variants of claim 8, 9, 12 or 13 of the '069 application.

As discussed above, a proper obviousness-type double patenting analysis focuses on whether an artisan of ordinary skill would regard the claims at issue as obvious variants of each other. The PTO, in the Office Action mailed September 22, 2004, focuses on whether the claims of the '069 application read on the subject matter encompassed by the instant claims. This analysis is inconsistent with binding precedent, as discussed above. Rather, the PTO must examine whether the claims of the present application are suggested by the claims of the '069 application. In fact, the claims of the '069 application do not suggest the subject matter of the rejected claims.

No claim of the '069 application in any way suggests to an artisan of ordinary skill that the methods claimed in the '069 application should be adapted to determine the resistance or susceptibility of an HCV population to an anti-HCV drug. None of the claims of the '069 application suggests that HCV can exist in quasi-species in a patient, and no claim suggests that it would be useful to assess the resistance or susceptibility of the entire population of HCV in a single method., and no claim of the '069 application suggests how

such a modification could be carried out. As such, the claims of the '069 application suggest neither the desirability nor the likely success of the presently claimed methods. Therefore, an artisan of only ordinary skill would not regard claims 112-115 and 117-126 as mere obvious variants of any claim of the '069 application.

In view of the foregoing, Applicants respectfully submit that claims 112-115 are not obvious variants of claims 8, 9, 12, or 13 of the '069 application. Accordingly, Applicants respectfully submit that the rejection of such claims under the judicially-created doctrine of obviousness-type double patenting is erroneous and should be withdrawn.

VI. Reference to Related, Co-Pending U.S. Applications

For the PTO's convenience, Applicants hereby identify all applications currently pending before the United States Patent and Trademark Office that are related to the present application. Applicants note that the '082 application listed below was inadvertently misidentified in the paper filed January 14, 2004, and earnestly apologize for any inconvenience this may have caused the PTO.

<u>Application No.</u>	<u>Attorney Docket No.</u>	<u>Filing Date</u>	<u>Art Unit</u>	<u>Examiner</u>
09/875,082	11068-051-999	June 6, 2001	1636	J. Ketter
10/139,069	11068-010-999	May 3, 2002	1648	D. Wortman
10/846,181	11068-085-999	May 14, 2004	1636	TBA

Application No. 10/139,069 is a continuation-in-part of the present application.

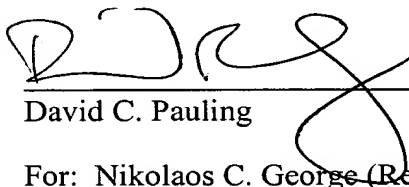
CONCLUSION

In light of the above amendments and remarks, Applicants respectfully submit that Claims 112-131 satisfy all the criteria for patentability and are in condition for allowance. Accordingly, Applicants respectfully request that the Examiner reconsider this application with a view towards allowance and solicit an expeditious passage of Claims 112-131 to issuance. Applicants earnestly request that the Examiner call the undersigned attorney at (650) 739-3939 to discuss any outstanding issues if the Examiner is inclined to issue another Office Action rather than the fervently desired Notice of Allowance.

Pursuant to 37 CFR § 1.136(a)(3), the Commissioner is authorized to charge all required fees, fees under 37 CFR § 1.17 and all required extension of time fees, or credit any overpayment, to Jones Day Deposit Account No. 503013 (Order No. 101962-999041).

Respectfully submitted,

Date: March 22, 2005



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